

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 25474

Docket No. 45595

03-1-02-1-U-2831

The First Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

"Claim in behalf of Engineer J. A. Krysh, hereinafter referred to as claimant, SS No. 361-66-0159, Union Pacific Railroad Northern Region, Chicago Commuter Operations, that claimant be reinstated to service with full seniority and vacation benefits restored, compensated for any and all lost time, including time spent at the investigation, reimbursed for any and all medical expenses incurred while claimant was dismissed from service, that claimant be removed from the Union Pacific Upgrade Discipline Policy and that this incident be expunged from claimant's personal record when claimant was investigated on January 24, 2001 and February 8, 2001 on the following charge:

"in connection with the report that you allegedly failed to report for duty at the designated time and place on January 16, 2001, while regularly assigned to Job 7126 on duty at Waukegan, Illinois at 1:40 PM. This indicates a possible violation of Union Pacific General Code of Operating Rule, 1.15, effective April 2, 2000."

FINDINGS:

The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

By notice dated January 18, 2001, the Carrier charged the Claimant, an Engineer with eight years of service, with failing to report to duty at the designated time and place on January 16, 2001. The Carrier withheld the Claimant from service on January 16, 2001 pending the outcome of the Investigation.

At the February 8, 2001 Investigation, the Manager of Operating Practices related that the Claimant failed to report to Job 7126 at Waukegan, Illinois, at 1:40 P.M. on January 16, 2001. Although the Claimant called a crew caller at approximately 1:35 P.M. to notify the Carrier that he would be unable to report to work due to car trouble, the Manager intimated that the Claimant should have called his immediate Supervisor.

The Claimant explained that he experienced an automobile breakdown at about 1:20 P.M., while commuting from Arlington Heights to Waukegan, on January 16. The Claimant produced copies of invoices showing that he paid approximately \$100.00 for towing and over \$600.00 for automotive repairs.

On February 16, 2001, the Carrier determined that the Claimant was guilty of the charges and issued him a Level 1 on the Carrier's Upgrade Discipline Policy. At the time, the Claimant was situated at Level 4 on Upgrade. Once in 1998 and once in 1999, the Carrier had disciplined the Claimant for failing to report to his assignment. Because the Claimant was at Level 4, the Level 1 elevated him to Level 5, which is permanent dismissal.

The threshold issue before the Board is whether the Carrier properly withheld the Claimant from service pending the Investigation. Section 2 of the System Disciplinary Rule vests the Carrier with some discretion to withhold employees from service. However, the final clause of the second sentence of Section 2 excludes "minor offenses" from the range of this discretion. While the Board need

not promulgate a precise definition of a "minor offense," one day of absence cannot be characterized as a major offense. The Rule contemplates that the nature of the charged offense controls whether the Carrier can withhold the Claimant from service as opposed to the possible disciplinary penalty. It is irrelevant whether the potential discipline in this case was dismissal since the Claimant was already at Level 4 on Upgrade. Retaining the Claimant in service would not have posed a hazard to other workers or interfered with productive work. Therefore, the Carrier breached Section 2 of the System Disciplinary Rule by withholding the Claimant from service.

The Carrier presented substantial evidence that the Claimant did not report to duty at the designated time and place on January 16, 2001.

There is not any dispute that the Claimant genuinely experienced car problems on January 16, 2001. As this Division stated in First Division Award 25235, the Claimant's car troubles occurring on the way to work can be a mitigating circumstance. While the Claimant was obligated to possess suitable transportation to commute to and from work (or utilize other means of transportation such as, public transit), car troubles do occur. Also, there is nothing in the record to show that the Claimant blamed previous absences on automobile breakdowns. Furthermore, the Claimant made an effort to contact the Carrier.

Because the undisputed car problem constituted a mitigating circumstance, permanent dismissal was an unduly harsh and excessive punishment in this particular case. However, to some degree, the Claimant created his own predicament by failing to report to duty at least twice in the recent past.

The Board finds that a long suspension measured by the time that the Claimant has been out of service will serve to impress upon him his obligation to be a reliable employee. After his reinstatement, the Claimant must regularly and punctually report to duty. To provide the Claimant with added inducement to avoid any tardiness or absences, the Claimant shall be placed at Level 3 on Upgrade.

Therefore, the Carrier shall reinstate the Claimant to service but without pay for time lost except for compensating the Claimant for the Carrier's violation of Section 2 of the System Disciplinary Rule. The Carrier shall pay the Claimant for lost wages covering the period from January 16, 2001 (the date that the Carrier

withheld the Claimant from service pending the Investigation) to February 16, 2001 (the date of the disciplinary notice).

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Dated at Chicago, Illinois, this 19th day of September 2003.